

## **Part VI**

### **VSMP General Program Requirements Related to MS4s and Land-Disturbing Activities**

#### **4VAC50-60-300. Exclusions .**

The following discharges do not require VSMP permits:

1. Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or surface waters for the purpose of mineral or oil exploration or development.
2. Discharges of dredged or fill material into surface waters that are regulated under §404 of the CWA.
3. The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to surface waters are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other party not leading to treatment works.
4. Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR Part 300 (2000) (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (2000) (Pollution by Oil and Hazardous Substances).
5. Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including stormwater runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations, discharges from concentrated aquatic animal production facilities, discharges to aquaculture projects, and discharges from silvicultural point sources.
6. Return flows from irrigated agriculture.
7. Discharges into a privately owned treatment works, except as the State Water Control Board may otherwise require.

#### **4VAC50-60-310. Prohibitions .**

A. Except in compliance with a VSMP permit issued by the board pursuant to Article 1.1 (§[10.1-603.1](#) et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia, it shall be unlawful for any person to discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities.

B. Any person in violation of subsection A of this section, who discharges or causes or allows a discharge of stormwater into or upon state waters from Municipal Separate Storm Sewer

Systems or land-disturbing activities, or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of subsection A of this section, shall notify the department of the discharge immediately upon discovery of the discharge but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted by the owner, to the department, within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by the permit.

C. No permit may be issued:

1. When the conditions of the permit do not provide for compliance with the applicable requirements of the CWA or the Act, or regulations promulgated under the CWA or the Act;
2. When the permit applicant is required to obtain a state or other appropriate certification under §401 of the CWA and that certification has not been obtained or waived;
3. When the regional administrator has objected to issuance of the permit;
4. When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states;
5. When, in the judgment of the Secretary of the Army, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;
6. For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;
7. For any discharge inconsistent with a plan or plan amendment approved under §208(b) of the CWA;
8. For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:
  - a. Before the promulgation of guidelines under §403(c) of the CWA (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the board determines permit issuance to be in the public interest; or
  - b. After promulgation of guidelines under §403(c) of the CWA, when insufficient information exists to make a reasonable judgment whether the discharge complies with them.
9. To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the Act and §§301(b)(1)(A) and 301(b)(1)(B) of the CWA, and for which the department has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:

- a. There are sufficient remaining pollutant load allocations to allow for the discharge; and

b. The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The board may waive the submission of information by the new source or new discharger required by this subdivision if the board determines that it already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph is to be included in the fact sheet to the permit under 4VAC50-60-520.

#### **4VAC50-60-320. Effect of a permit.**

A. Except for any toxic effluent standards and prohibitions imposed under §307 of the CWA and standards for sewage sludge use or disposal under §405(d) of the CWA, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with the Act and with §§301, 302, 306, 307, 318, 403, and 405 (a) through (b) of the CWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in this chapter.

B. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

C. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

#### **4VAC50-60-330. Continuation of expiring permits.**

A. The permit shall expire at the end of its term, except that the conditions of an expired permit continue in force until the effective date of a new permit if:

1. The permittee has submitted a timely application as required by this chapter, which is a complete application for a new permit; and
2. The board, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit.

B. Permits continued under this section remain fully effective and enforceable.

C. When the permittee is not in compliance with the conditions of the expiring or expired permit the board may choose to do any or all of the following:

1. Initiate enforcement action based upon the permit which has been continued;
2. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;
3. Issue a new permit with appropriate conditions; or
4. Take other actions authorized by this chapter.

#### **4VAC50-60-340. Confidentiality of information**

A. The board, the department, or the permit-issuing authority may require every permit applicant or permittee to furnish when requested such application materials, plans, specifications, and

other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the Act and this chapter. Any personal information shall not be disclosed except to an appropriate official of the board, department, or permit-issuing authority or as may be authorized pursuant to the Virginia Freedom of Information Act (§[2.2-3700](#) et seq. of the Code of Virginia). However:

1. Disclosure of records of the department, the board, or the permit-issuing authority relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions is prohibited. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been determined by the department, the board, or the permit-issuing authority.
2. Any secret formula, secret processes, or secret methods other than effluent data submitted to the department pursuant to this chapter may be claimed as confidential by the submitter in accordance with 40 CFR 122.7 (2000). Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "secret formulae," "secret processes" "secret methods" on each page containing such information. If no claim is made at the time of submission, the department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the Virginia Freedom of Information Act (§[2.2-3700](#) et seq. of the Code of Virginia).
3. This section shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any land-disturbing activity that may have occurred, or similar documents.

B. Claims of confidentiality for the following information will be denied:

1. The name and address of any permit applicant or permittee;
2. Permit applications, permits, and effluent data.

C. Information required by VSMP application forms provided by the department may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

#### **4VAC50-60-350. Guidance documents.**

The board may develop and use guidance, as appropriate, to implement technical and regulatory details of the VSMP permit program. Such guidance is distinguished from regulation by the fact that it is not binding on either the board or permittees. If a more appropriate methodology than that called for in guidance is available in a given situation, the more appropriate methodology shall be used to the extent it is consistent with applicable regulations and the Stormwater Management Act.